

**AMENDMENT IN THE NATURE OF A  
SUBSTITUTE TO H.R. 1858  
OFFERED BY MR. BLILEY  
OR MR. DINGELL**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Consumer and Investor  
3 Access to Information Act of 1999”.

**4 TITLE I—COMMERCE IN DUPLI-  
5 CATED DATABASES PROHIB-  
6 ITED**

**7 SEC. 101. DEFINITIONS.**

8       As used in this title:

9           (1) DATABASE.—(A) The term “database”  
10       means a collection of a large number of discrete  
11       items of information that have been collected and or-  
12       ganized in a single place, or in such a way as to be  
13       accessible through a single source, through the in-  
14       vestment of substantial monetary or other resources,  
15       for the purpose of providing access to those discrete

1 items of information by users of the database. Such  
2 term does not include works that are combined and  
3 ordered in a logical progression or other meaningful  
4 way in order to tell a story, communicate a message,  
5 represent an idea, or achieve a result.

6 (B) If a database is organized into discrete sec-  
7 tions containing a large number of discrete items of  
8 information, each section may be treated as a data-  
9 base if each such section meets the requirements of  
10 subparagraph (A).

11 (2) DUPLICATE OF A DATABASE.—A database  
12 is “a duplicate” of any other database if the data-  
13 base is substantially the same as such other data-  
14 base, as a result of the extraction of information  
15 from such other database.

16 (3) INFORMATION.—The term “information”  
17 means facts, data, or any other intangible material  
18 capable of being collected and organized in a system-  
19 atic way, with the exception of works of authorship  
20 within the meaning of section 102 of title 17, United  
21 States Code.

22 (4) COMMERCE.—The term “commerce” means  
23 all commerce which may be lawfully regulated by the  
24 Congress.

1           (5) IN COMPETITION.—The term “in competi-  
2           tion with” when used with respect to the sale or dis-  
3           tribution of a database to the public means that the  
4           database—

5                   (A) displaces substantial sales or licenses  
6                   of the database of which it is a duplicate; and

7                   (B) significantly threatens the opportunity  
8                   to recover a reasonable return on the invest-  
9                   ment in the collecting or organizing of the du-  
10                  plicated database.

11           (6) GOVERNMENT DATABASE.—The term “gov-  
12           ernment database” means a database that—

13                   (A) has been collected or maintained by  
14                   the United States of America, any foreign gov-  
15                   ernment, or any agency or instrumentality  
16                   thereof;

17                   (B) has been collected or maintained by a  
18                   commercial entity pursuant to a contract with  
19                   the United States of America or any agency or  
20                   instrumentality thereof, unless the information  
21                   contained in such database was permanently  
22                   available on an interactive computer network  
23                   without restriction in a publicly accessible elec-  
24                   tronic form without charge, at the time an ex-  
25                   traction occurred; or

1 (C) is required by Federal statute or regu-  
2 lation to be collected or maintained, to the ex-  
3 tent so required.

4 **SEC. 102. PROHIBITION AGAINST DISTRIBUTION OF DUPLI-**  
5 **CATES.**

6 It is unlawful for any person, by any means or instru-  
7 mentality of interstate or foreign commerce or commu-  
8 nications, to sell or distribute to the public a database  
9 that—

10 (1) is a duplicate of another database that was  
11 collected and organized by another person; and

12 (2) is sold or distributed in commerce in com-  
13 petition with that other database.

14 **SEC. 103. PERMITTED ACTS.**

15 (a) COLLECTING OR USE OF INFORMATION OB-  
16 TAINED THROUGH OTHER MEANS.—Nothing in this title  
17 shall restrict any person from selling or distributing to the  
18 public a database consisting of information obtained by  
19 means other than by extracting it from a database col-  
20 lected and organized by another person.

21 (b) NEWS REPORTING.—Nothing in this title shall  
22 restrict any person from selling or distributing to the pub-  
23 lic a duplicate of a services provider database for the sole  
24 purpose of news or sports reporting, including news and  
25 sports information gathering, dissemination, and com-

1 ment, unless the information duplicated is time sensitive  
2 and has been collected by a news or sports reporting enti-  
3 ty, and the sale or distribution is part of a consistent pat-  
4 tern engaged in for the purpose of direct competition.

5 (c) LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-  
6 TIES.—Nothing in this title shall prohibit an officer,  
7 agent, or employee of the United States, a State, or a po-  
8 litical subdivision of a State, or a person acting under con-  
9 tract of such officers, agents or employees, from selling  
10 or distributing to the public a duplicate of a database as  
11 part of lawfully authorized law enforcement or intelligence  
12 activities.

13 (d) SCIENTIFIC, EDUCATIONAL, OR RESEARCH  
14 USES.—No person or entity who for scientific, edu-  
15 cational, or research purposes sells or distributes to the  
16 public a duplicate of a database that has been collected  
17 or organized by another person or entity shall incur liabil-  
18 ity under this title so long as such conduct is not part  
19 of a consistent pattern engaged in for the purpose of com-  
20 petition with that other person.

21 **SEC. 104. EXCLUSIONS.**

22 (a) GOVERNMENT INFORMATION.—

23 (1) EXCLUSION OF GOVERNMENT DATA-  
24 BASES.—Protection under section 102 shall not ex-  
25 tend to government databases.

1           (2) INCORPORATED NONGOVERNMENT POR-  
2           TIONS PROTECTED.—The incorporation of all or part  
3           of a government database into a non-government  
4           database does not preclude protection for the por-  
5           tions of services provider the non-government data-  
6           base which came from a source other than the gov-  
7           ernment database.

8           (3) AUTHORITY TO EXCLUDE ADDITIONAL GOV-  
9           ERNMENT-SUPPORTED DATABASES.—Nothing in this  
10          title shall prevent the Federal Government or a  
11          State or local government from establishing by law  
12          or contract that a database, the creation or mainte-  
13          nance of which is substantially funded by such Fed-  
14          eral, State, or local government, shall not be subject  
15          to the protection afforded under this title.

16          (b) DATABASES RELATED TO INTERNET COMMU-  
17          NICATIONS.—Protection under section 102 does not ex-  
18          tend to a database incorporating information collected or  
19          organized—

20                (1) to perform the function of addressing, rout-  
21                ing, forwarding, transmitting, or storing Internet  
22                communications; or

23                (2) to perform the function of providing or re-  
24                ceiving connections for Internet communications.

25          (c) COMPUTER PROGRAMS.—

1           (1) PROTECTION NOT EXTENDED.—Subject to  
2       paragraph (2), protection under section 102 shall  
3       not extend to computer programs, including any  
4       computer program used in the manufacture, produc-  
5       tion, operation, or maintenance of a database, or  
6       any element of a computer program necessary to its  
7       operation.

8           (2) INCORPORATED DATABASES.—A database  
9       that is otherwise subject to protection under section  
10      102 is not disqualified from such protection solely  
11      because it resides in a computer program, so long as  
12      the database functions as a database within the  
13      meaning of this title.

14      (d) NONPROTECTABLE SUBJECT MATTER.— Protec-  
15      tion for databases under section 102 does not extend to  
16      the sale or distribution to the public of a duplicate of any  
17      individual idea, fact, procedure, system, method of oper-  
18      ation, concept, principle, or discovery.

19      (e) SUBSCRIBER LIST INFORMATION.—Protection for  
20      databases under section 102 does not extend to subscriber  
21      list information within the meaning of section 222(f) of  
22      the Communications Act of 1934 (47 U.S.C. 222(f)).  
23      Nothing in this subsection shall affect the operation of sec-  
24      tion 222(e) of such Act, under which a telecommunications  
25      carrier provides, upon request, subscriber list information

1 for the purposes of publishing directories in any format  
2 under nondiscriminatory and reasonable rates, terms, and  
3 conditions.

4 (f) **LEGAL MATERIALS.**—Protection under section  
5 102 shall not extend to primary legal materials, including  
6 court opinions, statutes, codes, regulations, or administra-  
7 tive agency decisions, from any Federal, State, or local  
8 jurisdiction, unless such materials were permanently avail-  
9 able on an interactive computer network without restric-  
10 tion, in an official publicly accessible electronic form with-  
11 out charge, at the time the extraction occurred.

12 (g) **SECURITIES MARKET DATA.**—Nothing in this  
13 title shall apply to any database, or any discrete section  
14 of a database, composed predominantly of market infor-  
15 mation within the meaning of section 11A(e)(6) of the Se-  
16 curities Exchange Act of 1934, as amended by section 201  
17 of this Act.

18 **SEC. 105. RELATIONSHIP TO OTHER LAWS.**

19 (a) **OTHER RIGHTS NOT AFFECTED.**—Subject to  
20 subsection (b), nothing in this title shall affect rights, limi-  
21 tations, or remedies concerning copyright, or any other  
22 rights or obligations relating to information, including  
23 laws with respect to patent, trademark, design rights,  
24 antitrust, trade secrets, privacy, access to public docu-  
25 ments, misuse, and the law of contract.



1 (b) PREEMPTION OF STATE LAW.—On or after the  
2 effective date of this Act, no State law that prohibits or  
3 that otherwise regulates conduct that is subject to the pro-  
4 hibitions specified in section 102 shall be effective to the  
5 extent that such State law is inconsistent with section 102.

6 (c) LICENSING.—Subject to the provisions on misuse  
7 in section 106(b), nothing in this title shall restrict the  
8 rights of parties freely to enter into licenses or any other  
9 contracts with respect to the use of information.

10 (d) COMMUNICATIONS ACT OF 1934.—Nothing in  
11 this title shall affect the operation of the Communications  
12 Act of 1934 (47 U.S.C. 151 et seq.) or the authority of  
13 the Federal Communications Commission.

14 (e) SECURITIES LAWS.—Nothing in this title shall  
15 affect—

16 (1) the operation of the Securities Act of 1933  
17 (15 U.S.C. 78a et seq.), the Securities Exchange Act  
18 of 1934 (15 U.S.C. 78a et seq.), the Public Utility  
19 Holding Company Act of 1935 (15 U.S.C. 79a et  
20 seq.), the Trust Indenture Act of 1939 (15 U.S.C.  
21 77aaa et seq.), the Investment Company Act of  
22 1940 (15 U.S.C. 80a–1 et seq.), the Investment Ad-  
23 visers Act of 1940 (15 U.S.C. 80b et seq.), or the  
24 Securities Investor Protection Act of 1970 (15  
25 U.S.C. 78aaa et seq.); or

1           (2) the authority of the Securities and Ex-  
2       change Commission.

3   **SEC. 106. LIMITATIONS ON LIABILITY.**

4       (a) SERVICE PROVIDER LIABILITY.—A provider of  
5   telecommunications services or information services (with-  
6   in the meaning of section 3 of the Communications Act  
7   of 1934 (47 U.S.C. 153)), or the operator of facilities  
8   therefor, shall not be liable for a violation of section 102  
9   if such provider or operator did not initially place the data-  
10   base that is the subject of the violation on a system or  
11   network controlled by such provider or operator.

12       (b) MISUSE.—A person shall not be liable for a viola-  
13   tion of section 102 if the person benefiting from the pro-  
14   tection afforded a database under section 102 misuses the  
15   protection. In determining whether a person has misused  
16   the protection afforded under this title, the following fac-  
17   tors, among others, shall be considered:

18           (1) the extent to which the ability of persons to  
19       engage in the permitted acts under this title has  
20       been frustrated by contractual arrangements or  
21       technological measures;

22           (2) the extent to which information contained in  
23       a database that is the sole source of the information  
24       contained therein is made available through licensing  
25       or sale on reasonable terms and conditions;

1           (3) the extent to which the license or sale of in-  
2           formation contained in a database protected under  
3           this title has been conditioned on the acquisition or  
4           license of any other product or service, or on the  
5           performance of any action, not directly related to the  
6           license or sale;

7           (4) the extent to which access to information  
8           necessary for research, competition, or innovation  
9           purposes has been prevented;

10          (5) the extent to which the manner of asserting  
11          rights granted under this title constitutes a barrier  
12          to entry into the relevant database market; and

13          (6) the extent to which the judicially developed  
14          doctrines of misuse in other areas of the law may  
15          appropriately be extended to the case or controversy.

16 **SEC. 107. ENFORCEMENT.**

17          (a) **USE OF FEDERAL TRADE COMMISSION ACT AU-**  
18 **THORITY.**—The Federal Trade Commission shall have ju-  
19 risdiction, under section 5 of the Federal Trade Commis-  
20 sion Act (15 U.S.C. 45), to prevent violations of section  
21 102 of this title.

22          (b) **RULEMAKING AUTHORITY.**—The Federal Trade  
23 Commission may, pursuant to subparagraph (A) or (B)  
24 of section 18(a) of the Federal Trade Commission Act (15  
25 U.S.C. 57a(a)), but without regard to the limitations con-

1 tained in section 18(b)(3) of such Act, prescribe rules to  
2 implement this title.

3 (c) ENFORCEMENT.—Any violation of any rule pre-  
4 scribed under subsection (b) shall be treated as a violation  
5 of a rule respecting unfair or deceptive acts or practices  
6 under section 5 of the Federal Trade Commission Act (15  
7 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act  
8 (15 U.S.C. 45(a)(2)), communications common carriers  
9 shall be subject to the jurisdiction of the Federal Trade  
10 Commission for purposes of this title.

11 (d) ACTIONS BY THE COMMISSION.—The Federal  
12 Trade Commission shall prevent any person from violating  
13 section 102 or a rule of the Commission under subsection  
14 (b) of this section in the same manner, by the same means,  
15 and with the same jurisdiction, powers, and duties as  
16 though all applicable terms and provisions of the Federal  
17 Trade Commission Act (15 U.S.C. 41 et seq.) were incor-  
18 porated into and made a part of this title. Any person  
19 who violates section 102 or such rule shall be subject to  
20 the penalties and entitled to the privileges and immunities  
21 provided in the Federal Trade Commission Act in the  
22 same manner, by the same means, and with the same ju-  
23 risdiction, power, and duties as though all applicable terms  
24 and provisions of the Federal Trade Commission Act were  
25 incorporated into and made a part of this title.

1   **SEC. 108. REPORT TO CONGRESS.**

2           Not later than 36 months after the date of enactment  
3 of this title, the Federal Trade Commission shall report  
4 to the Congress on the effect this title has had on elec-  
5 tronic commerce and on the United States database indus-  
6 try and related parties, including—

7           (1) the availability of databases, search engines,  
8           and other tools for locating information necessary  
9           for electronic commerce;

10          (2) the extent of competition between database  
11          producers, including the concentration of market  
12          power within the database industry;

13          (3) the investment in the development and  
14          maintenance of databases, including changes in the  
15          number and size of databases;

16          (4) the availability of information to industries  
17          and researchers which rely upon such availability;

18          (5) whether in the period after enactment of  
19          this title database producers have faced unfair com-  
20          petition, particularly from publishers in the Euro-  
21          pean Union; and

22          (6) the extent to which extraction of informa-  
23          tion from databases, to a degree insufficient to re-  
24          sult in liability under section 102, is harming data-  
25          base producers' incentive to collect and organize  
26          databases.

1   **SEC. 109. EFFECTIVE DATE.**

2           This title shall take effect on the date of the enact-  
3   ment of this Act, and shall apply to the sale or distribution  
4   after that date of a database that was collected and orga-  
5   nized after that date.

6   **TITLE II—SECURITIES MARKET**  
7           **INFORMATION**

8   **SEC. 201. MISAPPROPRIATION OF REAL-TIME MARKET IN-**  
9           **FORMATION.**

10          Section 11A of the Securities Exchange Act of 1934  
11   (15 U.S.C. 78k-1) is amended by adding at the end the  
12   following new subsection:

13          “(e) MISAPPROPRIATION OF REAL-TIME MARKET IN-  
14   FORMATION.—

15               “(1) PROHIBITION AGAINST MISAPPROPRIA-  
16   TION.—Subject to paragraphs (3), (4), and (5), any  
17   person who—

18                   “(A) obtains directly or indirectly from a  
19                   market information processor real-time market  
20                   information, and

21                   “(B) directly or indirectly sells, distributes  
22                   or redistributes, or otherwise disseminates such  
23                   real-time market information, without the au-  
24                   thorization of the market information processor,  
25                   shall be liable to that market information processor  
26                   for the remedies set forth in paragraph (2).

1 “(2) CIVIL REMEDIES.—

2 “(A) CIVIL ACTIONS.—Any person who is  
3 injured by a violation of paragraph (1) may  
4 bring a civil action for such a violation in an  
5 appropriate United States district court, except  
6 that any action against a State governmental  
7 entity may be brought in any court that has ju-  
8 risdiction over claims against such entity.

9 “(B) TEMPORARY AND PERMANENT IN-  
10 JUNCTIONS.—Any court having jurisdiction of a  
11 civil action under this subsection shall have the  
12 power to grant temporary and permanent in-  
13 junctions, according to the principles of equity  
14 and upon such terms as the court may deem  
15 reasonable, to prevent a violation of paragraph  
16 (1).

17 “(C) MONETARY RELIEF.—When a viola-  
18 tion of paragraph (1) has been established in  
19 any civil action arising under this subsection,  
20 the plaintiff shall be entitled to recover any  
21 damages sustained by the plaintiff.

22 “(D) DISGORGEMENT.—When a violation  
23 of paragraph (1) has been established, if the  
24 plaintiff is not able to prove recoverable dam-  
25 ages to the full extent of the defendant’s mone-

1           tary gain directly attributable to the violation,  
2           the court, in its equitable discretion, may order  
3           the defendant to disgorge the amount of such  
4           monetary gain to the plaintiff.

5           “(3) PERMITTED ACTS.—

6                   “(A) GATHERING OR USE OF REAL-TIME  
7           MARKET INFORMATION INDEPENDENTLY OB-  
8           TAINED.—Nothing in this subsection shall re-  
9           strict any person from independently gathering  
10          real-time market information, or from redistrib-  
11          uting or disseminating such independently gath-  
12          ered information.

13                   “(B) NEWS REPORTING.—Nothing in this  
14          subsection shall restrict any news reporting en-  
15          tity from extracting real-time market informa-  
16          tion for the sole purpose of news reporting, in-  
17          cluding news gathering, dissemination, and  
18          comment, unless the extraction is part of a con-  
19          sistent pattern of competing in the distribution  
20          of real-time market information with the mar-  
21          ket information processor from which the infor-  
22          mation was obtained.

23           “(4) RELATIONSHIP TO OTHER LAWS.—



1           “(A) PREEMPTION.—Subject to subpara-  
2           graphs (B) through (F), on and after the date  
3           of enactment of this subsection, this section—

4                   “(i) shall exclusively govern the unau-  
5                   thorized extraction, sale, distribution or re-  
6                   distribution, or other dissemination of real-  
7                   time market information; and

8                   “(ii) shall supersede any other Fed-  
9                   eral or State law (either statutory or com-  
10                  mon law) to the extent that—

11                   “(I) such other Federal or State  
12                   law establishes rights and remedies  
13                   with respect to the unauthorized ex-  
14                   traction, sale, distribution or redis-  
15                   tribution, or other dissemination of  
16                   real-time market information that are  
17                   different from or in addition to the  
18                   rights and remedies established by  
19                   this subsection; or

20                   “(II) such other Federal or State  
21                   law is inconsistent with this section.

22           “(B) FEDERAL SECURITIES LAWS.—Noth-  
23           ing in this subsection shall—

24                   “(i) affect the operation of any other  
25                   provision of the securities laws (as defined

1 in section 3(a)(47)), or the rules and regu-  
2 lations thereunder; or

3 “(ii) impair or limit the authority of  
4 the Commission.

5 “(C) ANTITRUST.—Nothing in this sub-  
6 section shall limit in any way the constraints  
7 that are imposed by Federal and State antitrust  
8 laws on the manner in which products and serv-  
9 ices may be provided to the public, including  
10 those regarding single suppliers of products and  
11 services.

12 “(D) LICENSING.—Nothing in this sub-  
13 section shall restrict the rights of parties freely  
14 to enter into licenses or any other contracts  
15 with respect to the extraction, sale, distribution  
16 or redistribution, or other dissemination of real-  
17 time market information, and to maintain civil  
18 actions under State law to enforce such licenses  
19 or contracts.

20 “(E) FEDERAL TRADE COMMISSION.—  
21 Nothing in this subsection shall affect—

22 “(i) the authority of the Federal  
23 Trade Commission; or

1 “(ii) the operation of any of the laws  
2 administered by the Federal Trade Com-  
3 mission.

4 “(F) OTHER LAWS.—Nothing in this sub-  
5 section shall affect rights, limitations, or rem-  
6 edies concerning rights or obligations under  
7 laws with respect to patent, trademark, or  
8 fraud.

9 “(5) LIMITATIONS ON ACTIONS.—

10 “(A) ADDITIONAL LIMITATION.—No civil  
11 action shall be maintained under this subsection  
12 for the extraction, sale, distribution or redis-  
13 tribution, or other dissemination of market in-  
14 formation that is not real-time market informa-  
15 tion.

16 “(B) PERSONS SUBJECT TO CONTRACTUAL  
17 REMEDIES.—No civil action shall be maintained  
18 under this subsection by a market information  
19 processor against any person to whom such  
20 processor provides real-time market information  
21 pursuant to a contract or agreement between  
22 such processor and such person with respect to  
23 any real-time market information or any rights  
24 or remedies provided pursuant to such contract  
25 or agreement.

1 “(6) DEFINITIONS.—As used in this subsection:

2 “(A) MARKET INFORMATION.—The term  
3 ‘market information’ means information—

4 “(i) with respect to quotations and  
5 transactions in any security; and

6 “(ii) the collection, processing, dis-  
7 tribution, and publication of which is sub-  
8 ject to this title.

9 “(B) REAL-TIME MARKET INFORMATION.—  
10 Taking into account the present state of tech-  
11 nology, different types of market data, how  
12 market participants use market data, and other  
13 relevant factors, the Commission may, con-  
14 sistent with the protection of investors and the  
15 public interest and with the objectives of this  
16 section, prescribe by rule the extent to which  
17 market information shall be considered to be  
18 real-time market information for purposes of  
19 this subsection.

20 “(C) MARKET INFORMATION PROC-  
21 ESSOR.—The term ‘market information proc-  
22 essor’ with respect to any market information  
23 means any exchange, self-regulatory organiza-  
24 tion, securities information processor, or na-  
25 tional market system plan administrator.”.

1   **SEC. 202. EFFECTIVE DATE.**

2           (a) IN GENERAL.—The amendment made by section  
3   201 shall take effect on the date of the enactment of this  
4   Act, and shall apply to acts committed on or after that  
5   date.

6           (b) PRIOR ACTS NOT AFFECTED.—No person shall  
7   be liable under section 11A(e) of the Securities Exchange  
8   Act of 1934 (15 U.S.C. 78k–1(e)), as added by section  
9   201 of this Act, for the extraction, sale, distribution or  
10   redistribution, or other dissemination of real-time market  
11   information prior to the date of enactment of this Act,  
12   by that person or by that person’s predecessor in interest.